U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: LIN 02 022 54906 Office: NEBRASKA SERVICE CENTER Date: MAR 02 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a custom tailor shop. It seeks to employ the beneficiary permanently in the United States as a custom tailor. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the priority date of the visa petition.

On appeal, counsel submits a statement and indicates that a brief will be submitted within thirty days. To date, however, no further documentation has been received. Therefore, a decision will be made based on the record, as it is presently constituted

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(l)(3) states in pertinent part:

> (ii) *Other documentation* – (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
>
> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, or meets the requirements of Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on January 12, 1998, indicates that the minimum requirement to perform the job duties of the proffered position is three years of experience in the job offered.

Counsel submitted a foreign language statement from Maria Bland Joint Ventures.

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite training as a custom tailor and denied the petition accordingly. The director noted that the foreign language document was not accompanied by a certified translation as required by Title 8, C.F.R. § 103.2(b)(3).

On appeal, counsel states:

1. With all due respect, the director's decision of April 20, 2002 was in error, and contrary to the facts and evidence presented as well as a breach of due process.

2. There was proper labor certification, and was dully (sic) submitted to INS.

3. Beneficiary was qualified and she did in fact meet all of the minimum requirements as stated in Part XIV and XV of Form ETA-750.

4. The foreign language documents submitted was (sic) in fact accompanied by proper certified translations.

5. All of these grounds will be proven beyond reasonable doubts. Will be proven in the brief will be filed in due cost (sic).

No additional evidence of the beneficiary's experience has been received. Therefore, the petitioner has not overcome the director's decision, and the petition may not be approved.

Beyond the decision of the director, there is no evidence in the record which establishes that the petitioner had the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence as required by 8 C.F.R. § 204.5(g)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

Order: The appeal is dismissed.